

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KEVIN R. MITCHELL,

Plaintiff,

-against-

**REPORT AND  
RECOMMENDATION**  
CV 05-5316 (DRH)(ARL)

PARK ELECTROCHEMICAL CORP. et al.,

Defendants.

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**LINDSAY, Magistrate Judge:**

On January 17, 2007, counsel for the plaintiff, Patrick C. McCarthy, filed a Suggestion of Death Upon the Record as to the plaintiff, Kevin Mitchell. Upon receipt, the undersigned advised counsel to submit a motion for substitution pursuant to Fed. R. Civ. P. 25. Despite the court's order, counsel for the plaintiff has not done so.

Fed. R. Civ. P. 25(a) provides:

The motion for substitution may be made by any party or by the successors or representatives of the deceased party . . . . Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

As more than ninety days has passed since death has been suggested, the undersigned recommends that the case be dismissed.

Dated: Central Islip, New York  
May 2, 2007

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/s/  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge